

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY Wife D.C.

05 JUN -1 PM 4:01

UNITED STATES OF AMERICA, X ROBERT P. DI TROIO  
Plaintiff, X CLERK, U.S. DIST. CT.  
vs. X W.D. OF TN, MEMPHIS  
PETER MATHIS, JR., X Cv. No. 05-2362-Ma/V  
Defendant. X ~~REOPENED~~  
X

---

ORDER DIRECTING CLERK TO COMPLY WITH  
JUDGE DONALD'S MAY 9, 2005 ORDER

---

Defendant Peter Mathis, Jr., Bureau of Prisons inmate registration number 14318-076, an inmate at the Federal Correctional Institution in Memphis, filed an irregular motion, entitled "Motion Requesting Relief Pursuant to Federal Rules of Civil Procedure Rules 60(b)(6)," in his closed criminal case on January 20, 2005 that, in effect, requested that his motion pursuant to 28 U.S.C. § 2255 be reopened. District Judge Bernice B. Donald issued an order on May 9, 2005 that provided, in pertinent part, as follows:

Under Sims, the Court construes the successive motion as a request for certification of a successive motion. Accordingly, it is hereby ordered pursuant to Sims and 28 U.S.C. § 1631 that the Clerk of Court remove the motion (docket entry 169) from this criminal case, docket the motion as a new case, and transfer it to the United States Court of Appeals for the Sixth Circuit. The Clerk shall place a copy of this order in the new case as well as this criminal case.

05/09/05 Order at 7.

In response to Judge Donald's order, the clerk docketed the defendant's motion as a new civil action and assigned it to this judge, who had no previous involvement in the defendant's criminal case. The Clerk did not, however, docket a copy of Judge Donald's May 9, 2005 order in the new case file and did not transfer the case to the Sixth Circuit pursuant to 28 U.S.C. § 2244(b)(3).<sup>1</sup>

The Clerk is ORDERED, forthwith, to comply with each and every aspect of Judge Donald's May 9, 2005 order. The transmission to the Sixth Circuit shall include a copy of Judge Donald's May 9, 2005 order.

IT IS SO ORDERED this 31st day of May, 2005.

  
\_\_\_\_\_  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> A review of the criminal docket indicates that the Clerk also has not complied with Judge Donald's directive that the September 24, 2004 order be mailed to the defendant at his address of record.



# Notice of Distribution

This notice confirms a copy of the document docketed as number 2 in case 2:05-CV-02362 was distributed by fax, mail, or direct printing on June 7, 2005 to the parties listed.

---

Peter Mathis  
14318-076  
F.C.I. Memphis  
P.O. Box 34550  
Memphis, TN 38184

Honorable Samuel Mays  
US DISTRICT COURT